

Mr. Joe Baker  
September 24, 1997  
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Just this week, Ms. Speerstra received a response from Ms. Kruse (dated September 10, but postmarked September 16), a copy of which is enclosed for your information. Ms. Kruse states in her letter that the UNE platform that LCI intends to use has been "determined to be a recombination" (by whom she does not state), and that pursuant to the Eighth Circuit's recent decision, BellSouth is not offering unbundled elements in combination. Ms. Kruse also states that if LCI orders individual elements in a combination that replicates a tariffed offering by BellSouth, BellSouth intends to charge LCI a resale rate for those elements.

I am writing to you to determine if Ms. Kruse has accurately stated BellSouth's position on the UNE platform requested by LCI. If she has, LCI objects to BellSouth's position as being contrary not only to the Telecommunications Act of 1996 (the "Act") and the FCC's regulations and orders interpreting and applying the Act, but also to the Eighth Circuit decision that Ms. Kruse cites in her letter.

As you know, section 251(c)(3) of the Act requires BellSouth to provide competitors "nondiscriminatory access to network elements," and to do so "in a manner that allows requesting carriers to combine such elements in order to provide . . . telecommunications service." Section 252(d)(1)(A)(i) requires that the price of network elements be "based on the cost" of providing the elements. The FCC's regulations under the Act preclude BellSouth from separating network elements that are currently combined in its network. See 47 C.F.R. § 51.315(b). As the FCC explained in its First Report and Order, this provision "bars incumbent LECs from separating network elements that are ordered in combination." See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 293 (August 8, 1996).

In its decision reviewing the Local Competition Order, the Eighth Circuit affirmed that BellSouth (and other ILECs) have a duty to provide LCI with combinations of elements that BellSouth currently combines in its own network, while vacating only those regulations that dealt with new combinations. Moreover, the Eighth Circuit affirmed that competitors such as LCI could provide telecommunications services entirely through the use of unbundled elements obtained from an ILEC's network, and specifically rejected the ILECs' argument that the use of unbundled elements in this fashion constituted a resale service for which resale rates should be charged.

Following the Eighth Circuit's decision, the FCC has reconfirmed the obligation of ILECs to provide existing combinations of UNEs to competitors. In its Third Order on Reconsideration, the FCC determined that "although incumbent LECs are not required to combine transport and switching facilities to the extent that those elements are not already combined, incumbent LECs may not separate such facilities that are currently combined, absent an affirmative request." (At ¶ 44.) In the Ameritech Michigan Order,

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the FCC emphasized that "when a competing carrier seeks to purchase a combination of network elements, an incumbent LEC may not separate network elements that the incumbent LEC currently combines." (At ¶ 336.)

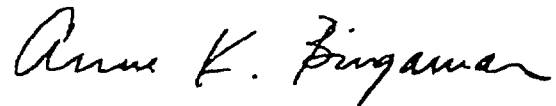
The UNE platform that LCI seeks to obtain from BellSouth consists of elements that are already combined in BellSouth's network: loops, unbundled switching and common or shared transport. Thus, there is no "recombination" of these elements that is required, and BellSouth is obligated to provide them to LCI in the combination requested. Moreover, BellSouth is obligated by the Act to provide these combined elements to LCI at cost based rates, not resale rates. Despite Ms. Kruse's claim to the contrary, there is nothing in the Eighth Circuit decision to support charging resale rates for these combined elements.

LCI believes that its ability to compete against BellSouth for local exchange and exchange access service will be significantly impaired if BellSouth continues to refuse to provide the UNE platform to LCI. The FCC agrees. In its Ameritech Michigan Order, the FCC recognized that "the ability of new entrants to use . . . combinations of unbundled network elements is integral to achieving Congress' objective of promoting competition in the local telecommunications market." (At ¶ 332.) The FCC also determined that "limitations on access to combinations of unbundled network elements would seriously inhibit the ability of potential competitors to enter local telecommunications markets through the use of unbundled elements, and would therefore significantly impede the development of local exchange competition." (At ¶ 333.)

For the reasons set forth above, we renew LCI's request to move forward as soon as possible with a test of the UNE platform as outlined in our test plan and correspondence to BellSouth. Please advise me as soon as possible whether BellSouth intends to continue to refuse to provide the UNE platform to LCI, and, if so, whether Ms. Kruse has accurately stated the reasons for BellSouth's refusal in that regard. If Ms. Kruse did not accurately state BellSouth's position, then please advise me when we can move forward with the test we have proposed.

I look forward to hearing from you soon.

Sincerely,



Anne K. Bingaman

AKB:slg



## **EXHIBIT E**

BellSouth Interconnection Services 205 988-7600  
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Hoover, Alabama 35244

Fred P. Monacelli  
Sales Assistant Vice President

October 7, 1997

Ms. Anne K. Bingaman  
Senior Vice President - LCI  
President, Local Telecommunications Division  
8180 Greensboro Drive  
McLean, Virginia 22102

Dear Ms. Bingaman:

This is in response to your September 24, 1997, letter to Joe Baker. In that letter you asked that BellSouth clearly state its position relative to LCI's unbundled network element (UNE) platform plan.

BellSouth considers LCI to be a valued customer. Regarding LCI's platform plan, BellSouth offers resale service and/or UNEs that LCI can combine with its own facilities to provide a telecommunications service or combine BellSouth UNEs itself to provide a unique telecommunications service or to duplicate a BellSouth retail service. BellSouth's position is consistent with the 8th Circuit Court of Appeal's July 18, 1997 opinion. The 8th Circuit plainly stated that the Act "unambiguously indicates that the requesting carriers will combine the unbundled network elements themselves." Therefore, there is no legal duty on the part of BellSouth to provide combined network elements to LCI. Consistent with the 8th Circuit's ruling, if it is LCI's plan to utilize all BellSouth network elements to provide finished telephone service, LCI may purchase all of the individual unbundled network elements needed to provide finished telephone service, but LCI must combine the necessary elements. The 8th Circuit ruling clearly finds, however, that BellSouth, as an ILEC, has no obligation to combine network elements. The 8th Circuit expressly stated in upholding the FCC's rule that "[our] ruling finding that [the Act] does not require an incumbent LEC to combine the elements for a requesting carrier establishes that requesting carriers will in fact be receiving the elements on an unbundled basis." Thus, the only meaning that can now be given to FCC Rule 51.315(b) is that an incumbent LEC may not further unbundle a network element to be purchased by another local provider unless explicitly requested to do so by that provider. The rule cannot be read as requiring ILEC's to deliver combinations to providers such as LCI.

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In all states, when LCI orders individual network elements that, when combined by LCI, duplicate a retail service provided by BellSouth, BellSouth will treat, for purposes of billing and provisioning, that order as one for resale. When LCI orders individual network elements that, when combined by LCI, creates a unique LCI telecommunications service, BellSouth will treat, for purposes of billing and provisioning, that order as one for unbundled network elements.

BellSouth, however, is examining the viability of providing various combinations of UNEs as a service to its interconnection customers. Such service offerings would have prices that reflect the 8th Circuit's finding that the use of unbundled network elements involves greater risk to the other provider than does resale.

I trust that this response provides the details you were seeking. As your Account Team, we stand ready to support LCI's local service initiatives with the same professionalism and customer focus we provide on the "access" side of your business.

Sincerely,

A handwritten signature in black ink, reading "Fred P. Monacelli". The signature is written in a cursive, flowing style.

Fred Monacelli

cc: Joe Baker